

AMENDED IN ASSEMBLY MARCH 30, 2005

CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

ASSEMBLY BILL

No. 241

Introduced by Assembly Member Harman

February 7, 2005

An act to amend Section 1107.5 of, and to add Sections 6020.5, 8020.5, 12550.5, 15678.10, 16915.5, and 17554.5 to, the Corporations Code, relating to business entities.

LEGISLATIVE COUNSEL'S DIGEST

AB 241, as amended, Harman. Mergers: certificate of satisfaction.

Existing law requires that the surviving corporation of a corporate merger assume the liability of the domestic disappearing corporation for specified tax obligations and allows the Secretary of State to file the merger without a certificate of satisfaction from the Franchise Tax Board, if the surviving corporation is a domestic corporation or a foreign corporation qualified to do business in this state.

This bill would specify that upon a merger, the surviving domestic or foreign corporation or other business entity would be subject to the tax liability, as specified, of the disappearing *domestic or foreign* entity. The bill would extend the Secretary of State's authority to file the merger without a certificate of satisfaction from the Franchise Tax Board if the surviving entity is a domestic limited liability company or ~~domestic~~ registered limited liability partnership or a foreign limited liability company or foreign limited liability partnership that is registered or qualified to do business in this state.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. Section 1107.5 of the Corporations Code is amended to read:

1107.5. (a) Upon merger pursuant to this chapter, a domestic or foreign surviving corporation or other business entity shall be subject to the liability of each domestic or foreign disappearing corporation or other business entity that is taxed under Part 10 (commencing with Section 17001) of, or under Part 11 (commencing with Section 23001) of, Division 2 of the Revenue and Taxation Code for the following:

(1) To prepare and file, or to cause to be prepared and filed, tax and information returns otherwise required of that disappearing entity as specified in subparagraphs (A) to (D), inclusive.

(A) For a disappearing domestic or foreign limited partnership, the preparation and filing shall be made pursuant to Chapter 10.5 (commencing with Section 17935) of Part 10 of Division 2 of the Revenue and Taxation Code.

(B) For a disappearing domestic or foreign limited liability company, the preparation and filing shall be made pursuant to Chapter 10.6 (commencing with Section 17941) of Part 10 of Division 2 of the Revenue and Taxation Code.

(C) For a disappearing registered or foreign limited liability partnership, the preparation and filing shall be made pursuant to Chapter 10.7 (commencing with Section 17948) of Part 10 of Division 2 of the Revenue and Taxation Code.

(D) For a disappearing domestic or foreign corporation, the preparation and filing shall be made pursuant to Part 11 (commencing with Section 23001) of Division 2 of the Revenue and Taxation Code.

(2) To pay any tax liability determined to be due.

(b) Notwithstanding Sections 1103, 1108, 1110, 1113, 6014, 6018, 6019.1, 8014, 8018, 8019.1, 12535, 12539, 12540.1, 15678.4, and 17552 of this code and Sections 17945, 17948.1, and 23334 of the Revenue and Taxation Code, if the surviving entity is a domestic limited liability company, domestic corporation, or ~~domestic~~ registered limited liability partnership or a foreign limited liability company, foreign limited liability partnership, or foreign corporation that is registered or qualified

1 to do business in California, the Secretary of State shall file the
2 merger without the certificate of satisfaction of the Franchise Tax
3 Board and shall notify the Franchise Tax Board of the merger.

4 SEC. 2. Section 6020.5 is added to the Corporations Code, to
5 read:

6 6020.5. (a) Upon merger pursuant to this chapter, a domestic
7 or foreign surviving corporation or other business entity shall be
8 subject to the liability of each domestic or foreign disappearing
9 corporation or other business entity that is taxed under Part 10
10 (commencing with Section 17001) of, or under Part 11
11 (commencing with Section 23001) of, Division 2 of the Revenue
12 and Taxation Code for the following:

13 (1) To prepare and file, or to cause to be prepared and filed,
14 tax and information returns otherwise required of that
15 disappearing entity as specified in subparagraphs (A) to (D)
16 inclusive.

17 (A) For a disappearing domestic or foreign limited
18 partnership, the preparation and filing shall be made pursuant to
19 Chapter 10.5 (commencing with Section 17935) of Part 10 of
20 Division 2 of the Revenue and Taxation Code.

21 (B) For a disappearing domestic or foreign limited liability
22 company, the preparation and filing shall be made pursuant to
23 Chapter 10.6 (commencing with Section 17941) of Part 10 of
24 Division 2 of the Revenue and Taxation Code.

25 (C) For a disappearing registered or foreign limited liability
26 partnership, the preparation and filing shall be made pursuant to
27 Chapter 10.7 (commencing with Section 17948) of Part 10 of
28 Division 2 of the Revenue and Taxation Code.

29 (D) For a disappearing domestic or foreign corporation, the
30 preparation and filing shall be made pursuant to Part 11
31 (commencing with Section 23001) of Division 2 of the Revenue
32 and Taxation Code.

33 (2) To pay any tax liability determined to be due.

34 (b) Notwithstanding Sections 1103, 1108, 1110, 1113, 6014,
35 6018, 6019.1, 8014, 8018, 8019.1, 12535, 12539, 12540.1,
36 15678.4, and 17552 of this code and Sections 17945, 17948.1,
37 and 23334 of the Revenue and Taxation Code, if the surviving
38 entity is a domestic limited liability company, domestic
39 corporation, or ~~domestic~~ registered limited liability partnership or
40 a foreign limited liability company, foreign limited liability

1 partnership, or foreign corporation that is registered or qualified
2 to do business in California, the Secretary of State shall file the
3 merger without the certificate of satisfaction of the Franchise Tax
4 Board and shall notify the Franchise Tax Board of the merger.

5 SEC. 3. Section 8020.5 is added to the Corporations Code, to
6 read:

7 8020.5. (a) Upon merger pursuant to this chapter, a domestic
8 or foreign surviving corporation or other business entity shall be
9 subject to the liability of each domestic or foreign disappearing
10 corporation or other business entity that is taxed under Part 10
11 (commencing with Section 17001) of, or under Part 11
12 (commencing with Section 23001) of, Division 2 of the Revenue
13 and Taxation Code for the following:

14 (1) To prepare and file, or to cause to be prepared and filed,
15 tax and information returns otherwise required of that
16 disappearing entity as specified in subparagraphs (A) to (D)
17 inclusive.

18 (A) For a disappearing domestic or foreign limited
19 partnership, the preparation and filing shall be made pursuant to
20 Chapter 10.5 (commencing with Section 17935) of Part 10 of
21 Division 2 of the Revenue and Taxation Code.

22 (B) For a disappearing domestic or foreign limited liability
23 company, the preparation and filing shall be made pursuant to
24 Chapter 10.6 (commencing with Section 17941) of Part 10 of
25 Division 2 of the Revenue and Taxation Code.

26 (C) For a disappearing registered or foreign limited liability
27 partnership, the preparation and filing shall be made pursuant to
28 Chapter 10.7 (commencing with Section 17948) of Part 10 of
29 Division 2 of the Revenue and Taxation Code.

30 (D) For a disappearing domestic or foreign corporation, the
31 preparation and filing shall be made pursuant to Part 11
32 (commencing with Section 23001) of Division 2 of the Revenue
33 and Taxation Code.

34 (2) To pay any tax liability determined to be due.

35 (b) Notwithstanding Sections 1103, 1108, 1110, 1113, 6014,
36 6018, 6019.1, 8014, 8018, 8019.1, 12535, 12539, 12540.1,
37 15678.4, and 17552 of this code and Sections 17945, 17948.1,
38 and 23334 of the Revenue and Taxation Code, if the surviving
39 entity is a domestic limited liability company, domestic
40 corporation, or ~~domestic~~ registered limited liability partnership or

1 a foreign limited liability company, foreign limited liability
2 partnership, or foreign corporation that is registered or qualified
3 to do business in California, the Secretary of State shall file the
4 merger without the certificate of satisfaction of the Franchise Tax
5 Board and shall notify the Franchise Tax Board of the merger.

6 SEC. 4. Section 12550.5 is added to the Corporations Code,
7 to read:

8 12550.5. (a) Upon merger pursuant to this chapter, a
9 domestic or foreign surviving corporation or other business entity
10 shall be subject to the liability of each domestic or foreign
11 disappearing corporation or other business entity that is taxed
12 under Part 10 (commencing with Section 17001) of, or under Part
13 11 (commencing with Section 23001) of, Division 2 of the
14 Revenue and Taxation Code for the following:

15 (1) To prepare and file, or to cause to be prepared and filed,
16 tax and information returns otherwise required of that
17 disappearing entity as specified in subparagraphs (A) to (D)
18 inclusive.

19 (A) For a disappearing domestic or foreign limited
20 partnership, the preparation and filing shall be made pursuant to
21 Chapter 10.5 (commencing with Section 17935) of Part 10 of
22 Division 2 of the Revenue and Taxation Code.

23 (B) For a disappearing domestic or foreign limited liability
24 company, the preparation and filing shall be made pursuant to
25 Chapter 10.6 (commencing with Section 17941) of Part 10 of
26 Division 2 of the Revenue and Taxation Code.

27 (C) For a disappearing registered or foreign limited liability
28 partnership, the preparation and filing shall be made pursuant to
29 Chapter 10.7 (commencing with Section 17948) of Part 10 of
30 Division 2 of the Revenue and Taxation Code.

31 (D) For a disappearing domestic or foreign corporation, the
32 preparation and filing shall be made pursuant to Part 11
33 (commencing with Section 23001) of Division 2 of the Revenue
34 and Taxation Code.

35 (2) To pay any tax liability determined to be due.

36 (b) Notwithstanding Sections 1103, 1108, 1110, 1113, 6014,
37 6018, 6019.1, 8014, 8018, 8019.1, 12535, 12539, 12540.1,
38 15678.4, and 17552 of this code and Sections 17945, 17948.1,
39 and 23334 of the Revenue and Taxation Code, if the surviving
40 entity is a domestic limited liability company, domestic

1 corporation, or ~~domestic~~ registered limited liability partnership or
2 a foreign limited liability company, foreign limited liability
3 partnership, or foreign corporation that is registered or qualified
4 to do business in California, the Secretary of State shall file the
5 merger without the certificate of satisfaction of the Franchise Tax
6 Board and shall notify the Franchise Tax Board of the merger.

7 SEC. 5. Section 15678.10 is added to the Corporations Code,
8 to read:

9 15678.10. ~~(a)~~ Upon merger pursuant to this article, a
10 surviving *domestic or foreign* limited partnership or other
11 business entity shall be subject to the liability of each
12 disappearing *domestic or foreign* limited partnership or other
13 business entity that is taxed under Part 10 (commencing with
14 Section 17001) of, or under Part 11 (commencing with Section
15 23001) of, Division 2 of the Revenue and Taxation Code for the
16 following:

17 ~~(1)~~

18 ~~(a)~~ To prepare and file, or to cause to be prepared and filed,
19 tax and information returns otherwise required of that
20 disappearing entity as specified in ~~subparagraphs (A) to (D)~~
21 *paragraphs (1) to (4)*, inclusive.

22 ~~(A)~~

23 ~~(1)~~ For a disappearing domestic or foreign limited partnership,
24 the preparation and filing shall be made pursuant to Chapter 10.5
25 (commencing with Section 17935) of Part 10 of Division 2 of the
26 Revenue and Taxation Code.

27 ~~(B)~~

28 ~~(2)~~ For a disappearing domestic or foreign limited liability
29 company, the preparation and filing shall be made pursuant to
30 Chapter 10.6 (commencing with Section 17941) of Part 10 of
31 Division 2 of the Revenue and Taxation Code.

32 ~~(C)~~

33 ~~(3)~~ For a disappearing registered or foreign limited liability
34 partnership, the preparation and filing shall be made pursuant to
35 Chapter 10.7 (commencing with Section 17948) of Part 10 of
36 Division 2 of the Revenue and Taxation Code.

37 ~~(D)~~

38 ~~(4)~~ For a disappearing domestic or foreign corporation, the
39 preparation and filing shall be made pursuant to Part 11

(commencing with Section 23001) of Division 2 of the Revenue and Taxation Code.

(2)

(b) To pay any tax liability determined to be due.

~~(b) Notwithstanding Sections 1103, 1108, 1110, 1113, 6014, 6018, 6019.1, 8014, 8018, 8019.1, 12535, 12539, 12540.1, 15678.4, and 17552 of this code and Sections 17945, 17948.1, and 23334 of the Revenue and Taxation Code, if the surviving entity is a domestic limited liability company, domestic corporation, or domestic registered limited liability partnership or a foreign limited liability company, foreign limited liability partnership, or foreign corporation that is registered or qualified to do business in California, the Secretary of State shall file the merger without the certificate of satisfaction of the Franchise Tax Board and shall notify the Franchise Tax Board of the merger.~~

SEC. 6. Section 16915.5 is added to the Corporations Code, to read:

16915.5. (a) Upon merger pursuant to this article, a surviving *domestic or foreign* partnership or other business entity shall be subject to the liability of each disappearing *domestic or foreign* partnership or other business entity that is taxed under Part 10 (commencing with Section 17001) of, or under Part 11 (commencing with Section 23001) of, Division 2 of the Revenue and Taxation Code for the following:

(1) To prepare and file, or to cause to be prepared and filed, tax and information returns otherwise required of that disappearing entity as specified in subparagraphs (A) to (D) inclusive.

(A) For a disappearing domestic or foreign limited partnership, the preparation and filing shall be made pursuant to Chapter 10.5 (commencing with Section 17935) of Part 10 of Division 2 of the Revenue and Taxation Code.

(B) For a disappearing domestic or foreign limited liability company, the preparation and filing shall be made pursuant to Chapter 10.6 (commencing with Section 17941) of Part 10 of Division 2 of the Revenue and Taxation Code.

(C) For a disappearing registered or foreign limited liability partnership, the preparation and filing shall be made pursuant to Chapter 10.7 (commencing with Section 17948) of Part 10 of Division 2 of the Revenue and Taxation Code.

1 (D) For a disappearing domestic or foreign corporation, the
2 preparation and filing shall be made pursuant to Part 11
3 (commencing with Section 23001) of Division 2 of the Revenue
4 and Taxation Code.

5 (2) To pay any tax liability determined to be due.

6 (b) Notwithstanding Sections 1103, 1108, 1110, 1113, 6014,
7 6018, 6019.1, 8014, 8018, 8019.1, 12535, 12539, 12540.1,
8 15678.4, and 17552 of this code and Sections 17945, 17948.1,
9 and 23334 of the Revenue and Taxation Code, if the surviving
10 entity is a domestic limited liability company, domestic
11 corporation, or ~~domestic~~ registered limited liability partnership or
12 a foreign limited liability company, foreign limited liability
13 partnership, or foreign corporation that is registered or qualified
14 to do business in California, the Secretary of State shall file the
15 merger without the certificate of satisfaction of the Franchise Tax
16 Board and shall notify the Franchise Tax Board of the merger.

17 SEC. 7. Section 17554.5 is added to the Corporations Code,
18 to read:

19 17554.5. (a) Upon merger pursuant to this chapter, a
20 surviving *domestic or foreign* limited liability company or other
21 business entity shall be subject to the liability of each
22 disappearing *domestic or foreign* limited liability company or
23 other business entity that is taxed under Part 10 (commencing
24 with Section 17001) of, or under Part 11 (commencing with
25 Section 23001) of, Division 2 of the Revenue and Taxation Code
26 for the following:

27 (1) To prepare and file, or to cause to be prepared and filed,
28 tax and information returns otherwise required of that
29 disappearing entity as specified in subparagraphs (A) to (D),
30 inclusive.

31 (A) For a disappearing domestic or foreign limited
32 partnership, the preparation and filing shall be made pursuant to
33 Chapter 10.5 (commencing with Section 17935) of Part 10 of
34 Division 2 of the Revenue and Taxation Code.

35 (B) For a disappearing domestic or foreign limited liability
36 company, the preparation and filing shall be made pursuant to
37 Chapter 10.6 (commencing with Section 17941) of Part 10 of
38 Division 2 of the Revenue and Taxation Code.

39 (C) For a disappearing registered or foreign limited liability
40 partnership, the preparation and filing shall be made pursuant to

1 Chapter 10.7 (commencing with Section 17948) of Part 10 of
2 Division 2 of the Revenue and Taxation Code.

3 (D) For a disappearing domestic or foreign corporation, the
4 preparation and filing shall be made pursuant to Part 11
5 (commencing with Section 23001) of Division 2 of the Revenue
6 and Taxation Code.

7 (2) To pay any tax liability determined to be due.

8 (b) Notwithstanding Sections 1103, 1108, 1110, 1113, 6014,
9 6018, 6019.1, 8014, 8018, 8019.1, 12535, 12539, 12540.1,
10 15678.4, and 17552 of this code and Sections 17945, 17948.1,
11 and 23334 of the Revenue and Taxation Code, if the surviving
12 entity is a domestic limited liability company, domestic
13 corporation, or ~~domestic~~ registered limited liability partnership or
14 a foreign limited liability company, foreign limited liability
15 partnership, or foreign corporation that is registered or qualified
16 to do business in California, the Secretary of State shall file the
17 merger without the certificate of satisfaction of the Franchise Tax
18 Board and shall notify the Franchise Tax Board of the merger.